FILE COPY

Office Supreme Court, U. S.
FILED
FEB 3 1930
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1929.

No. 33

HAROLD J. COOLIDGE AND AUGUSTUS P. LORING, TRUSTEES, *Appellants*,

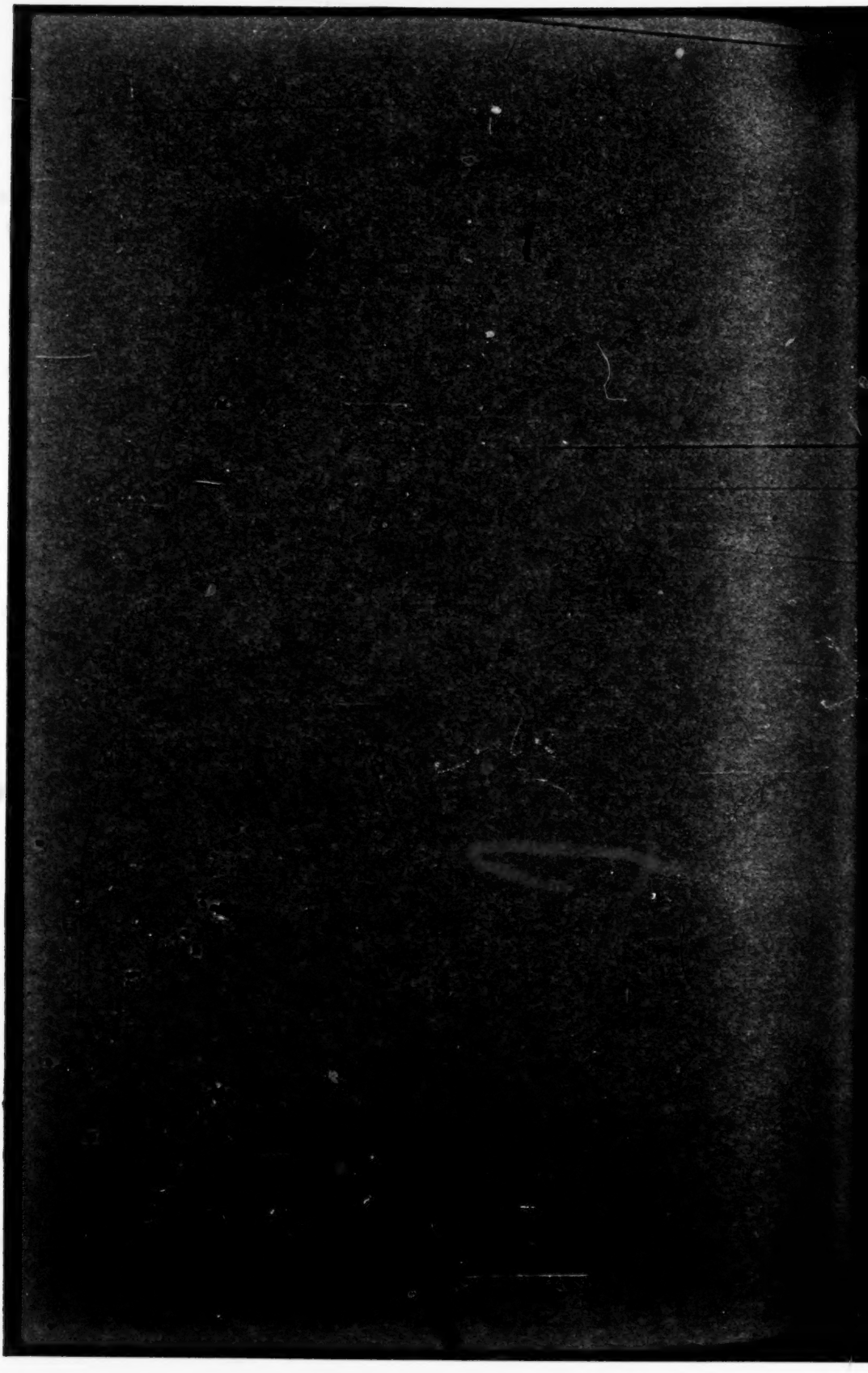
v.

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

STATEMENT AS TO JURISDICTION ON APPEAL.

ROBERT G. DODGE,
Counsel for Appellants.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.



Supreme Court of the United States.

OCTOBER TERM, 1929.

No. 583.

HAROLD J. COOLIDGE AND AUGUSTUS P. LORING, TRUSTEES, *Appellants*,

v.

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

STATEMENT AS TO JURISDICTION ON APPEAL.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:—

The appellants in support of the jurisdiction of this Court to review the above-entitled cause on appeal respectfully represent as follows:—

I.

STATUTORY PROVISION SUSTAINING JURISDICTION.

Section 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 937 (U. S. C. Title 28, §343), is as follows:—

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution,

> treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

Pursuant to the Act of January 31, 1928 (45 Stat. 54), as amended by the Act of April 26, 1928 (45 Stat. 466), the present appeal is brought in lieu of a writ of error.

II.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on December 23, 1929 (R. 33).*

On the same day the application for appeal (R. 35) was presented (R. 37) and allowed (R. 38-39), the bond approved (R. 40-41) and the citation issued (R. 42).

The opinion of the Supreme Judicial Court of Massachusetts (R. 22) referred to below is not yet officially reported, but has been printed in Mass. Adv. Sh. [1929] 1831 and in 167 N. E. Rep. 757.

III.

Nature of the Case and Rulings below.

This is a proceeding for the abatement of an inheritance tax assessed by the respondent in his capacity of Commissioner of Corporations and Taxation of the Common-

* All references to the record are to the pages of the certified unprinted record prepared by the Register of Probate for the County of Norfolk in the Commonwealth of Massachusetts and on file with the Clerk of this Court. The record has not yet been printed.

wealth of Massachusetts upon the estate of Julia Coolidge, late of Brookline, Massachusetts, under color of Section 1 of Chapter 65 of the General Laws of Massachusetts, the material part of which (as originally enacted) is as follows:—

> "All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of the commonwealth or not, which shall pass by will, or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, made in contemplation of the death of the grantor or donor or made or intended to take effect in possession or enjoyment after his death, and any beneficial interest therein which shall arise or accrue by survivorship in any form of joint ownership in which the decedent joint owner contributed during his life any part of the property held in such joint ownership or of the purchase price thereof, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of the commonwealth exempt from taxation, or for or upon trust for any charitable purposes to be carried out within the commonwealth, or to or for the use of the commonwealth or any town therein for public purposes, shall be subject to a tax at [specified rates]."

The various amendments to this section (the last of which was made by Acts of 1929, c. 292, §1) need not be recited, as these amendments deal only with the application of the statute to the property of non-residents or with other matters not important for the present purpose.

The proceeding was begun by a petition filed by the present appellants in the Probate Court for the County of Nor-

folk (R. 1, 3) pursuant to Section 27 of Chapter 65 of the General Laws of Massachusetts, which, as amended by Section 18 of Chapter 520 of the Acts of 1922, is as follows:—

> "The Commissioner shall determine the amount of tax due and payable upon any estate or part thereof, and shall certify the amount so due and payable to the persons by whom the tax is payable; but in the determination of the amount of any tax under this chapter the commissioner shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee, grantee, donee or survivor aggrieved by any determination of the commissioner may, within one year after the payment of any such tax, apply by a petition in equity to the probate court having jurisdiction of the estate of the decedent for the abatement of the tax or any part thereof, and if the court adjudges that the tax or any part thereof was wrongly exacted it shall order an abatement of such part thereof as was assessed without authority of law. Upon a final decision ordering an abatement of any part of such a tax, the treasurer shall pay the amount adjudged to have been illegally exacted, with interest, without any further act or resolve making appropriation therefor."

The facts which appeared at the hearing in the Probate Court are summarized as follows in the opinion of the Supreme Judicial Court (R. 22) hereinafter referred to:—

> "The petitioners are trustees under a deed and declaration of trust executed on July 29, 1907, by J. Randolph Coolidge and Julia Coolidge and the petitioners. By that deed a large amount of real and personal estate was

transferred to the trustees by the settlors voluntarily and not as a bona fide purchase for full consideration in money or in money's worth. The trustees were given extensive powers of management, investment and reinvestment with the right to determine finally what receipts and payments should be credited to income or principal. The part of the trust fund furnished by J. Randolph Coolidge was four sevenths, and the part furnished by Julia Coolidge was three sevenths. By the terms of the trust the income was to be paid in these proportions to each of the settlors during their joint lives and then the entire income to the survivor, and, upon the death of the survivor, the principal was to be divided equally among their five sons, provided that, if any of the sons should predecease the survivor of the settlors, his share should go to those entitled to take his intestate property under the statute of distributions in force at the death of such survivor, with a further provision to the effect that in no event should a widow of such deceased son take as distributee more than half of such share. There was in the declaration of trust no power of revocation or modification or termination prior to the death of the survivor of the settlors. *Coolidge* v. *Loring*, 235 Mass. 220. By instrument executed on April 6, 1917, the settlors assigned their interest in the trust to the five sons, all of whom eventually survived the termination of the trust. Julia Coolidge died in January, 1921, and J. Randolph Coolidge on November 10, 1925, both being residents of this Commonwealth. The defendant determined that the petitioners were subject to excise taxes under G. L. c. 65, §1, as amended, upon the four sevenths and upon the three sevenths of the trust estate furnished respectively by each settlor as of November 10, 1925. There is no controversy as to the amount of the excise if any is due.

"When the declaration of trust was executed, no statute was operative under which the trust property could have been subjected to an excise because the succession was to direct descendants of the settlors. Statutes then in force provided for levy of an excise only where the succession was to collateral relatives and to strangers."

As pointed out in the opinion (R. 23) the first Massachusetts statute purporting to impose a tax with respect to the passing of property to direct descendants was Chapter 563 of the Acts of 1907, which took effect on September 1, 1907, and upon which Section 1 of Chapter 65 of the General Laws is founded.

The petitioners (now appellants) requested the Probate Court to rule (a) that the statute under color of which the tax in question was assessed did not according to its true construction authorize the imposition of such tax, (b) that the statute, if construed as authorizing the imposition of the tax, was repugnant to the Constitution of Massachusetts and (c) that the statute, if so construed, was repugnant to the Constitution of the United States. The rulings requested with respect to this last point were as follows (R. 18-19):—

"4. If G. L. c. 65, §1, purports to authorize the imposition of the tax now in question, it is repugnant to Section 10 of Article I of the Constitution of the United States in that it impairs the obligation of the contract embodied in the trust indenture of July 29, 1907.

"5. If G. L. c. 65, §1, purports to authorize the imposition of the tax now in question, it is repugnant to Section 10 of Article I of the Constitution of the United States in that it impairs the obligation of the contract embodied in the assignment of April 6, 1917.

"6. If G. L. c. 65, §1, purports to authorize the imposition of the tax now in question, it deprives the peti-

tioners and those claiming under them of their property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States.

"7. If G. L. c. 65, §1, purports to authorize the imposition of the tax now in question, it denies to the petitioners and those claiming under them the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States."

The Probate Court, without making any decision, reserved all questions of law presented by the case for the determination of the Supreme Judicial Court, which is the highest court of the Commonwealth of Massachusetts. This procedure was in accordance with Sections 9 and 13 of Chapter 215 of the General Laws of Massachusetts, the material parts of these sections being as follows:—

"SECTION 9. A person aggrieved by an order, decree or denial of a probate court made after this chapter takes effect, may, within twenty days after the entry thereof, appeal from the same to the supreme judicial court, and the appeal shall be heard and determined by the full court, which shall have like powers and authority in respect thereto as upon an appeal in a suit in equity under the general equity jurisdiction."

* * * * * * * * * *

"SECTION 13. A judge of the probate court by whom a case or matter is heard for final determination may reserve and report the evidence and all questions of law therein for consideration of the full court, and thereupon like proceedings shall be had as upon appeal."

The petitioners' requests for rulings were embodied in the reservation (R. 18). The Supreme Judicial Court sent down a rescript (R. 20) directing that the petition be dis-

missed and incorporating by reference an opinion (R. 22-32) in which it was held in substance that none of the petitioners' contentions were well founded and that the tax was lawfully assessed; after examining many authorities, including various decisions of this court, it was stated that "the validity of the present statute under the Constitution of the United States and of this Commonwealth appears to us to be established by these and the other authorities already cited." The Probate Court thereupon entered a final decree denying each of the petitioners' requests for rulings and dismissing the petition (R. 33). Under the Massachusetts practice the decree so entered constitutes the final decision of the highest court of the State in which a decision could be had, so that the appeal is taken directly from that decree.

Davis v. *L. L. Cohen & Co., Inc.*, 268 U. S. 638.

The procedure has been the same in all substantial particulars as that in *Ex parte Worcester County National Bank*, 279 U. S. 347, which came to this court by appeal from a decree of the Probate Court for Worcester County, Massachusetts.

IV.

Cases believed to sustain Jurisdiction.

The decision of this Court in *Saltonstall* v. *Saltonstall*, 276 U. S. 260, involved the constitutionality of the statute now under consideration as applied to a different trust and is directly in point on the question of jurisdiction. Of the many cases similar in principle the following may be referred to:—

Safe Deposit & Trust Co. v. *Virginia*, 280 U. S. 83.

Macallen Co. v. *Massachusetts*, 279 U. S. 620.

Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 31.

Schlesinger v. *Wisconsin*, 270 U. S. 230.
Rhode Island Trust Co. v. *Doughton*, 270 U. S. 69.
Frick v. *Pennsylvania*, 268 U. S. 473.
Alpha Portland Cement Co. v. *Massachusetts*, 268 U. S. 203.

In *Nichols* v. *Coolidge*, 274 U. S. 531, Section 402 (c) of the Revenue Act of 1918 was held unconstitutional as applied to the trust now in question.

The appellants therefore submit that this Court has jurisdiction of their appeal by virtue of Section 237 (a) of the Judicial Code as amended by the Act of February 13, 1925.

ROBERT G. DODGE,
Counsel for Appellants.